



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1264

RIN 2700-AE79

[NASA Document Number: NASA-25-034; NASA Docket Number: NASA-2025-0069]

Implementation of the Administrative False Claims Act

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The National Aeronautics and Space Administration is proposing to amend its regulations in order to fully implement the Administrative False Claims Act (AFCA), as amended by the Fiscal Year 2025 National Defense Authorization Act. This updated rule establishes clear and comprehensive administrative procedures for investigating, evaluating, and imposing civil penalties and monetary assessments on individuals or entities that knowingly make, submit, or present false claims, representations, or misleading statements to NASA. The AFCA offers a streamlined, agency-level enforcement remedy that enables NASA to more effectively address smaller, lower-dollar fraud cases, safeguard critical Federal funds, and strongly deter fraudulent conduct.

DATES: NASA must receive comments on or before [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 2700-AE79 through the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. All comments received will be posted without change to the Federal eRulemaking Portal; including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Robert Vogt, 202-763-3659, robert.j.vogt@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 23, 2024, the National Defense Authorization Act (NDAA) for Fiscal Year 2025 (FY 2025 NDAA) (P.L. 118-159) was signed into law. Under section 5203, the FY 2025 NDAA revitalizes an existing but underutilized fraud enforcement mechanism: the Administrative False Claims Act of 2023 (AFCA). This Act, previously known as the Program Fraud Civil Remedies Act of 1986, offers a streamlined administrative remedy for addressing false claims and statements that the Department of Justice (DOJ) opts not to prosecute. The new statute requires amendment to the NASA's regulations at 14 CFR 1264 within 180 days of enactment. The AFCA complements the more widely known and widely used civil False Claims Act by providing an administrative process by which Federal executive branch agencies can address relatively small dollar value false claims that might not warrant the attention of the DOJ. The liability provisions of the AFCA remain closely modeled on those in the False Claims Act. The principal differences between the False Claims Act and the AFCA are that the AFCA does not include a qui tam enforcement mechanism, covers false written statements even in the absence of a claim, and provides for administrative rather than judicial resolution.

II. Regulatory Analysis

Executive Order (EO) 12866 – Regulatory Planning and Review, EO 13563 – Improving Regulation and Regulatory Review, and EO 14192 – Unleashing Prosperity Through Deregulation

EOs 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). EO 13563 emphasizes the importance of quantifying both costs and benefits of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is a significant regulatory action under EO 12866. This rule is expected to be an EO 14192 deregulatory action.

EO 13132 – Federalism

EO 13132 requires agencies to ensure meaningful and timely input by state and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. This action has been analyzed in accordance with the principles and criteria contained in the order, and NASA has determined that this action will not have a substantial direct effect or federalism implications on the states and would not preempt any state law or regulation or affect the states' ability to discharge traditional state governmental functions. Therefore, consultation with the states is not necessary.

EO 13175 – Consultation and Coordination with Indian Tribal Governments

This final rule has been analyzed in accordance with the principles and criteria contained in EO 13175. NASA has determined that the removal of Subpart 1204.3 does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them; the funding and consultation requirements of EO 13175 do not apply.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.¹

Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Unfunded Mandates Reform Act of 1995

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This rule will not impose a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

List of Subjects 14 CFR Part 1264

Administrative practice and procedure; Claims; Fraud.

For the reasons set forth in the preamble, NASA proposes to amend 14 CFR part 1264 as follows:

PART 1264—IMPLEMENTATION OF THE ADMINISTRATIVE FALSE CLAIMS ACT

1. The authority citation for part 1264 continues to read as follows:

Authority: 31 U.S.C. 3809, 51 U.S.C. 20113(a).

2. In § 1264.100, revise paragraphs (a) to read as follows:

§ 1264.100 Basis and purpose.(a) **Basis.** This part implements the Administrative False Claims Act, Pub. L. 99-509, sections 6101-6104, 100 Stat. 1874 (October 1986), amended Pub. L. 118-159, December 23, 2024, 138 Stat, 2440, to be codified at 31 U.S.C. 3801-3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

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3. In § 1264.101, amend paragraphs (e)(2)(iii), (g), (l), (m), (p), (r), to read as follows:

§ 1264.101 Definitions.

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(e) * * *

* * * * *

(3) Made to the authority which has the effect of concealing or improperly avoiding or decreasing an obligation to pay, transmit or account for property, services, or money to the authority.

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(g) **Consent hearing** means that the authority and the defendant consent, as provided in § 1264.106(c), that the presiding officer be the Civilian Board of Contract Appeals (CBCA). The Chairperson may designate another administrative judge of the CBCA as presiding officer in a consent hearing.

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(l) **Investigating official** means the NASA Inspector General, or designee who is serving in a position for which the rate of basic pay, is not less than the minimum rate of basic pay for the grade GS-16 (under the General Schedule).

(m) **Knows or has reason to know**, for purposes of establishing liability, means that a person:

- (1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;
- (2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or
- (3) Acts in reckless disregard of the truth or falsity of the claim or statement and no proof of specific intent to defraud is required.

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(p) **Presiding officer**, except as provided for pursuant to consent trial notice, means

(1) In the case of an authority to which the provisions of subchapter II of chapter 5 of title 5 apply, an ALJ appointed in the authority pursuant to section 3105 of such title or detailed to the authority pursuant to section 3344 of such title.

(2) If the authority is not subject to the provisions of Subchapter II of Chapter 5, Title 5, U.S.C. an officer or employee of the Authority who—

- (i) Is appointed by the Authority head to conduct hearings under this part;
- (ii) Is assigned to cases in rotation so far as practicable;
- (iii) May not perform duties inconsistent with the duties and responsibilities of a presiding officer.

(iv) Is entitled to pay prescribed by the Office of Personnel Management independently of ratings and recommendations made by the authority and in accordance with Chapter 51 Title 5 and Subchapter III of Chapter 53 of Title 5;

(v) Is not subject to performance appraisal pursuant to Chapter 43 of Title 5; and

(vi) May be removed, suspended, furloughed, or reduced in grade or pay only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing by such Board.

(3) A member of the board of contract appeals pursuant to section 7105 of title 41, if the Authority does not employ an available presiding officer under subparagraph (1) of this section.

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(r) **Reviewing official** means the NASA Associate Administrator for Mission Support or designee.

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4. In § 1264.102, amend paragraph (a)(1) by adding a new subparagraph (v) to read as follows:

* * * * *

(v) Is made to an authority which has the effect of concealing or improperly avoiding or decreasing an obligation to pay or transmit property, services, or money to the authority,

(2) Shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$14,308 for each such claim.

* * * * *

5. In § 1264.103, revise paragraph (b) to read as follows:

* * * * *

(b) If the investigating official concludes that an action under the Administrative False Claims Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

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6. In § 1264.104, amend paragraph (a) and subparagraph (b)(4) to read as follows:

(a) If, based on the report of the investigating official under § 1264.103(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under the Administrative False Claims Act, and there is a reasonable prospect of collecting, from a person with respect to whom the reviewing official is referring allegations of liability in such notice, the amount for which such person may be liable, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 1264.106.

(b) * * *

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(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of the Administrative False Claims.

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7. In § 1264.105, revise subparagraph (a)(2) to read as follows:

(a) * * *

* * * * *

(2) In the case of allegations of liability under §1264.102(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraphs (b) of this section), the amount of money or the value of property or services demanded or requested in violation of §1264.102(a) does not exceed \$1,000,000.

8. In § 1264.106, revise subparagraph (c)(1) to read as follows:

* * * * *

(c) * * *

(1) Notice to Consent to the chairperson of the Armed Services Board of Contract Appeals (ASBCA), or Designee, as presiding officer;

* * * * *

9. In § 1264.118, revise subparagraph (c)(7) to read as follows:

* * * * *

(c) * * *

(7) Scheduling dates for the exchange of witness lists, statements, and of proposed exhibits;

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10. In § 1264.120, revise subparagraph (d)(1) and add a new subparagraph (d)(6) to read as follows:

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(d) * * *

(1) A party seeking discovery must file a motion with the presiding officer. Such a motion shall be accompanied by a copy of the discovery request or, in the cast of depositions, a summary of the scope of the proposed deposition.

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(6) The presiding officer shall regulate the timing of discovery.

11. In § 1264.123, revise paragraph (b)(9) to read as follows:

* * * * *

(b) * * *

(9) That the parties simultaneously file specified documents or information as directed by the presiding officer.

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12. In § 1264.135, revise the paragraph to read as follows:

The presiding officer may decide on any post-hearing motions and may require the parties to file post-hearing briefs. In any event, upon approval of the presiding officer, any party may file a

post-hearing brief. The presiding officer shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file reply briefs, and may grant an extension of the 60-day time period or other time for good cause shown.

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13. In § 1264.144, revise the paragraph to read as follows:

(a) Any amount collected under this chapter shall be credited first to reimburse the authority or other Federal entity that expended costs in support of the investigation or prosecution of the action, including any court or hearing costs; and amounts reimbursed under clause shall be deposited in:

(i) the appropriations account of the authority or other Federal entity from which the costs described in subparagraph (a) were obligated;

(ii) a similar appropriations account of the authority or other Federal entity; or

(iii) if the authority or other Federal entity expended nonappropriated funds, another appropriate account; and remain available until expended.

(b) Any amount remaining after reimbursements described in above shall be deposited as miscellaneous receipts in the Treasury of the United States.

* * * * *

14. Revise § 1264.146 to read as follows:

(a) A notice to the person alleged to be liable with respect to a claim or statement shall be mailed or delivered in accordance with 14 CFR 1264.107 not later than the later of—

(1) 6 years after the date on which the violation is committed; or

(2) 3 years after the date on which facts material to the action are known or reasonably should have been known by the authority head, but in no event more than 10 years after the date on which the violation is committed.

(b) Such notice shall specify the allegations of liability against such person and shall state the right of such person to request a hearing with respect to such allegations.

15. Remove Appendix A to Part 1264.

Nanette Smith

Team Lead, NASA Directives and Regulations

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